

Tentative Rulings for June 21, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

13CECG02003 *William E. Johnson and Mala Doreen Johnson v.
California Department of Transportation and
California Highway Patrol (Dept. 501)*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(5)

Tentative Ruling

Re: ***Juan Estrada and Angelica Hernandez, individually
and as Guardians Ad Litem for Zujey Ramirez, a minor
v. Parlier Unified School District and Jesus and
Rosendo Maciel***
Superior Court Case No. 15 CECG 02396

Hearing Date: June 21, 2016 **(Dept. 402)**

Motion: Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain the general demurrers with leave to amend. The special demurrers are rendered moot. An amended complaint in compliance with the ruling is to be filed within 15 days of notice of the ruling. Notice runs from the date that the Minute Order is served by 5 days for service via mail. [CCP § 1013] "Allegations in the second amended complaint that are new or different from those in the first amended complaint are to be set in **boldface** type."

Explanation:

Background

Plaintiffs' decedent, Diego Estrada was a student in the Parlier Unified School District. He normally rode the School Bus to school. However, on January 29, 2015, the bus service was cancelled due to unsafe fog conditions. The minor had no other means for transportation and so, he and his sister, Zujey Ramirez began to walk to school that day. They were walking on the sidewalk when they were struck by a vehicle driven by Defendant Jesus Maciel. The vehicle belonged to Rosendo Maciel. Diego was killed and Zujey suffered serious injuries.

On July 29, 2015, Plaintiffs filed a Complaint. After a demurrer filed by PUSD was sustained with leave to amend, Plaintiffs filed a First Amended Complaint on April 1, 2016. Prior to filing a demurrer, counsel for PUSD "met and conferred" with Plaintiffs' counsel in compliance with CCP § 430.41(a). See Declaration of Ryan Marshall filed in support of the demurrer. No agreement was reached and on May 5, 2016, PUSD filed a general demurrer for failure to state sufficient facts and a special demurrer for uncertainty to the first and second causes of action. Opposition and a reply were filed.

Merits

Here, the Plaintiffs allege a cause of action for wrongful death and negligent infliction of emotional distress against Defendant Parlier Unified School District. To reiterate, Gov. Code § 810 et seq. abolishes all common law liability. See *Tuthill*, supra. Therefore, the general demurrers will be sustained. The special demurrers are rendered moot.

However, even if a demurrer is sustained, leave to amend the complaint is routinely granted. Courts are very liberal in permitting amendments, not only where a complaint is defective in form, but also where substantive defects are apparent: "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." [*Angie M. v. Sup.Ct. (Hiemstra)* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup.Ct. (API Auto Ins. Services)* (1999) 75 Cal.App.4th 594, 601]

Pursuant to California Rules of Court, Rule 391(a) and Code of Civil Procedure § 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: JYH on 6/20/16
(Judge's initial) (date)

Tentative Rulings for Department 403

Tentative Rulings for Department 501

(20)

Tentative Ruling

Re: ***Baltara Enterprises v. R&C Patterson Family et al.***, Superior Court Case No. 14CECG01033

Hearing Date: **June 21, 2016 (Dept. 501)**

Motion: Motion for Leave to File Cross-Complaint

Tentative Ruling:

To grant. (Code Civ. Proc. § 428.10(b).) Moving parties shall file the proposed cross-complaint within 5 days of service of the order by the clerk.

Explanation:

A party against whom a cause of action has been asserted in a . . . cross-complaint may file a cross-complaint setting forth . . . any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in the cross-complaint . . . arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him . . .

(Cal. Code Civ. Proc. § 428.10(b).)

There is no dispute here that the claims to be asserted against Ransom arises from the same transaction or series of transactions as the claims set forth in the pending complaint and cross-complaint.

Cross-complaints against third party cross-defendants may be filed without leave of court any time before the court sets the first trial date. (Code Civ. Proc. § 428.50(b).) The proposed cross-complaint is to be filed against persons not currently parties to this action. Since the trial date has already been set, leave of court is required.

It is undisputed that the cross-complaint is permissive, not compulsory. (Code Civ. Proc. § 426.30(a).) Accordingly, those claims could be asserted in a separate action. "Permission to file a permissive cross-complaint is solely within the trial court's discretion." (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) "Courts must apply a policy of liberality in permitting amendments at any stage of the proceeding, including during trial, when no prejudice to the opposing party is shown. [Citations omitted] However, even if a good amendment is proposed in proper form, unwarranted delay in presenting it may, of itself, be a valid reason for denial." (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345.) Courts are much more critical to proposed amendments when offered "after long unexplained

delay or on the eve of trial, or where there is a lack of diligence, or there is prejudice to the opposing party." (*Hulsley v. Koehler* (1990) 218 Cal.App.3d 1150, 1159-60.)

Here, the court is satisfied that moving parties were not dilatory in seeking leave to amend. It is represented, without contradiction, that moving parties did not know of Ransom's change in position until the 2/17/16 deposition. While moving parties could have moved quicker in seeking leave to file the cross-complaint, the new parties still wouldn't have had enough time to defend the action without requesting a continuance of the trial date, which the court expects to be forthcoming once the proposed cross-defendants appear in the action. Moreover, a slight delay in trial does not appear to prejudice the opposing parties. The claimed accruing damages are speculative, and Patterson offers no authority that it is a relevant consideration.

Given that Ransom's actions are central to each party's claims in this action, the court finds judicial economy would be served by granting movants leave to assert their claims against Ransom in this action.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/20/16.
(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***Minjares v. City of Fresno***
Superior Court Case No.: 15CECG01247

Hearing Date: June 21, 2016 (**Dept. 501**)

Motion: By Defendants City of Fresno and Jaspinder Chauhan for leave to file an amended answer

Tentative Ruling:

To grant, with the proposed amended answer attached to the declaration of Erica Camarena, filed on May 18, 2016, to be deemed filed and served as of the date of the service of this minute order.

The Court has, in its discretion, has considered the late-filed opposition. (Cal. Rules of Court, rule 3.1300(d).)

Explanation:

Defendants City of Fresno and Jaspinder Chauhan have shown good cause for the amendment, and the policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified: "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend; and, where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596.)

The Court also notes that a motion for summary adjudication of this affirmative defense is set for hearing on September 7, 2016; consequently, it must be pleaded in the answer. Affirmative defenses that constitute "new matter" are not in issue under a general denial, and therefore, if not pleaded, are not proper grounds for a defendant's motion for summary judgment. (*Kendall v. Walker* (2009) 181 Cal.App.4th 584, 598.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/20/16.
 (Judge's initials) (Date)

(20)

Tentative Ruling

Re:

Babcock et al. v. Centex Homes et al.

Case No. 12CECG04013

Centex Homes et al. v. Windows By Advanced, Inc., et al.

Case No. 13CECG02959

Hearing Date:

June 21, 2016 (Dept. 501)

Motion:

Carriveau-Spencer, Inc. dba James & Company Lighting's
Motion to Determine Good Faith Settlement

Tentative Ruling:

To grant. (Code Civ. Proc. § 877, *et seq.*)

Explanation:

Under Code Civ. Proc. § 877.6, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6(a)(1).)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc. § 877.6(b).)

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc. § 877.6(c).)

Where the motion for good faith settlement is not contested, a barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case, is sufficient to meet the settling party's burden of showing good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261.)

Inasmuch as the motion is uncontested, the court finds that the motion is sufficient to show a *prima facie* showing of good faith.

Tentative Ruling

(Judge's initials) (Date)

(28)

Tentative Ruling

Re: **Khosa v. Huff, et al.**

Case No. 15CECG02044

Hearing Date: June 21, 2016 (Dept. 501)

Motion: By Defendant Sandra K. Huff demurring to the Third Amended Verified Complaint of Plaintiff Khosa.

Tentative Ruling:

To continue the hearing to July 12, 2016 at 3:30 p.m. in Department 501. Defendants may file and serve a brief addressing the issues raised by the Court below no later than June 30, 2016. Any further reply brief on the part of Plaintiff may be filed and served no later than July 6, 2016.

Explanation:

A general demurrer admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

Moreover, where there are several causes of action in the complaint, a demurrer to the entire complaint may be overruled if any cause of action is properly stated. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 36.)

Further, if the essential facts of some valid cause of action are alleged, even if unintended by the plaintiff, the complaint is good against a general demurrer. (*Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39 ("[W]e are not limited to plaintiffs' theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have ... long since departed from holding a plaintiff strictly to the 'form of action' he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained."))

Here, Defendant has filed a general demurer to the "complaint and each cause of action" on the grounds that the claims are barred by the statute of frauds.

As set forth in the previous rulings on the matter, Defendants are correct the causes of action listed in the TAC are not sustainable under a straight-forward statute of frauds defense or on Plaintiff's proffered explanation that the contract was partly performed.

The statute of frauds generally bars a contract for the sale of real property which is not memorialized in a writing. (Civil Code § 1624(a)(3); *Maynes v. Angeles Mesa Land Co.* (1938) 10 Cal.2d 587, 590.) However, an oral contract for real property is nevertheless enforceable where the buyer establishes part performance in reliance on the agreement. (CCP §§ 1971; 1972.)

Part performance requires the buyer to have taken possession of the subject property and either tendered payment or made substantial improvements thereon. (*Anderson v. Stansbury* (1952) 38 Cal.2d 707, 715-716; *Halloran v. Isaacson* (1949) 95 Cal.App.2d 357, 366-367; *Harrison v. Hanson* (1958) 165 Cal.App.2d 370, 376; see Miller and Starr, 1 California Real Estate § 1:76 (4th Ed.).)

The change in possession is essential - simply tendering a down payment is wholly insufficient. (see *Engasser v. Jones* (1948) 88 Cal.App.2d 171, 176; *Secrest v. Security Nat. Mortg. Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 556 [payment of money is insufficient as there is an adequate remedy at law].) Accordingly, at minimum, the plaintiff is required to allege a change in possession of the property occurred. (*Harrison, supra*, 165 Cal.App.2d at 376; *Halloran, supra*, 95 Cal.App.2d at 367; *Hambey v. Wise* (1919) 181 Cal. 286, 291 [actual physical possession is required – "mere technical possession" insufficient {citations omitted}].)

Here, the Third Amended Complaint does not allege the plaintiff took possession of the property, tendered payment or made substantial improvements. Moreover, although the plaintiff alleges 1500 almond trees were purchased, the trees were never planted, i.e. there was neither possession nor improvements made. (TAC, ¶ 11.) Consequently, without allegations of possession and substantial improvements, there is no basis for the part performance exception to the statute of frauds. (*Anderson, supra*, 38 Cal.2d at 715-716; *Halloran, supra*, 95 Cal.App.2d at 366-367; *Harrison, supra*, 165 Cal.App.2d at 376.) So the Plaintiff cannot rely on the part performance exception to the statute of frauds.

The TAC does allege that the contract was partially oral and partially written. So the demurrer cannot be sustained on those grounds.

However, despite this, the Third Amended Complaint does appear to state a cause of action for promissory estoppel. The elements of promissory estoppel are: "(1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages measured by the extent of the obligation assumed and not performed." (*Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 692.) Here, Plaintiff has alleged a promise to sell the property (TAC ¶17); (2) reliance in terms of the purchase of the almond trees (TAC ¶¶ 11, 16); (3)

substantial detriment in the form of the purchase and allocation of the trees (TAC ¶¶ 11, 16); and (4) damages in the form of those trees (TAC ¶¶ 11, 16). Thus, the Third Amended Complaint appears to allege all the elements of a promissory estoppel claim. If this reading of the TAC is correct, then the demurrer should be overruled, since the pleading does state at least one cause of action. (*Quelimane Co.*, *supra*, 19 Cal.4th at 38-39.)

Furthermore, it has been held that the doctrine of estoppel can preclude reliance upon the statute of frauds as a defense. (*Associated Creditor's Agency v. Haley Land Co.* (1966) 239 Cal.App.2d 610, 617 ("The doctrine of estoppel to assert the statute of frauds as a defense is applicable where a party, by words or conduct, represents that he will stand by his oral agreement, and the other party, in reliance upon that representation, changes his position, to his detriment.")) Here, there are allegations that Defendant Huff made an oral agreement and that Plaintiff changed their position to their detriment. As a result, the Third Amended Complaint could be read as stating the promissory estoppel exception to the statute of frauds.

Because neither party briefed whether the Third Amended Complaint states either a cause of action for promissory estoppel, or whether Defendant is estopped from asserting the statute of frauds defense, the Court will continue the hearing date to July 12, 2016 at 3:30 p.m. in Department 501. Defendants may file and serve a brief addressing the issues raised by the Court below no later than June 30, 2016. Any further reply brief on the part of Plaintiff may be filed and served no later than July 6, 2016.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/20/16.
(Judge's initials) (Date)

(28)

Tentative Ruling

Re: **Vasquez, et al. v. OR Express Logistics, et al.**

Case No. 15CECG03738

Hearing Date: June 21, 2016 (Dept. 501)

Motion: By Defendant Hyundai Translead, to strike punitive damages in the Complaint brought by Plaintiffs.

Tentative Ruling:

To grant the motion with leave to amend.

Plaintiff shall have 10 court days from the date of this ruling in which to file a first amended complaint. Any new or amended pleadings must be set forth in **boldface** typeset.

Explanation:

[Note- as of the date of this tentative ruling, no opposition or reply brief appears in the Court's files.]

California Code of Civil Procedure 436 states that a court may "[s]trike out any relevant, false, or improper matter inserted into any pleading," or, alternatively, "[s]trike out all or any part of any pleading not drawn in conformity with the laws of this state." A motion to strike is therefore the vehicle by which a defendant can challenge the pleading of punitive damages allegations. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

The allegations supporting punitive damages claims must be more than "conclusory." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Here, there are simply no allegations against moving party and therefore no allegations that arise to the facts showing "oppression, fraud, or malice" required for punitive damages. (Code Civ.Proc. §3294, subd.(a).)

Therefore, the motion to strike paragraph 14, subparagraph (a)(2) is granted with leave to amend to allow Plaintiffs the opportunity to plead facts showing a basis for punitive damages.

Issued By: MWS on 6/20/16.
(Judge's initials) (Date)

Tentative Rulings for Department 502

Tentative Rulings for Department 503

(17)

Tentative Ruling

Re: ***Genthner v. Liberty Mutual Fire Ins. Co., et al.***
Court Case No. 16 CECG 00160

Hearing Date: June 21, 2016 (Dept. 503)

Motion: Demurrer to First Amended Complaint of defendants Liberty Mutual Fire Ins. Co., Greg Williams, Ricki Light and John Graham

Tentative Ruling:

To take the hearing on the demurrer to the Complaint off calendar.

Before filing any new demurrer, moving parties must fully comply with Code of Civil Procedure section 430.41. Any new hearing date must be obtained pursuant to The Superior Court of Fresno County, Local Rules, rule 2.2.1.

Explanation:

Because this demurrer was filed May 19, 2016, after the January 1, 2016 effective date of Code of Civil Procedure section 430.41, defendants were required to comply with that code section. Section 430.41 requires, among other things: 1) that prior to filing a demurrer the demurring party "shall" meet and confer "in person or by telephone" with the party who filed the subject pleading to determine whether an agreement can be reached that would resolve the demurrer. (Code Civ. Proc. § 430.41, subd. (a).) Meeting and conferring in writing does not satisfy section 430.41, subdivision (a).

Section 430.41 provides no exception for self-represented parties, unless the self-represented party is incarcerated, which plaintiff is not. (Code Civ. Proc. § 430.41, subd. (d)(1).) The demurring party must file and serve the meet and confer declaration with the demurrer. (Code Civ. Proc. § 430.41, subd. (a)(3).)

A court can order a meet and confer conference on its own motion at any time. (Code Civ. Proc. § 430.41, subd. (c).) If a conference is held, the court shall not preclude a party from filing a demurrer and the time to file a demurrer shall not begin until after the conference has concluded. (*Ibid.*)

Because section 430.41 was not complied with, the demurrer must be taken off calendar and the parties are ordered to meet and confer as required by section 430.41. The moving parties may then file a demurrer if the meet and confer fails to resolve their issues.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 6/15/16 .
(Judge's initials) (Date)

(23)

Tentative Ruling

Re: **Rosalva Negrete-Dabbs v. C. Lee Fenglaly, M.D.**
Superior Court Case No. 16CECG00309

Hearing Date: Tuesday, June 21, 2016 (**Dept. 503**)

Motion: Defendants Fenglaly Lee, M.D.'s and OMNI Women's Health Medical Group, Inc.'s Demurrer to Plaintiffs Rosalva Negrete-Dabbs' and Freddy Dabbs' First Amended Complaint

Tentative Ruling:

To take off calendar Defendants Fenglaly Lee, M.D.'s and OMNI Women's Health Medical Group, Inc.'s demurrer to Plaintiffs Rosalva Negrete-Dabbs' and Freddy Dabbs' first amended complaint. (Code Civ. Proc., § 430.41, subd. (a).)

The Court orders Plaintiffs' and Defendants' counsel to meet and confer in person or by telephone as required by Code of Civil Procedure section 430.41, subdivision (a). If the parties do not reach an agreement resolving the objections raised in the instant demurrer, Defendants may obtain a new hearing date for the instant demurrer. If a new hearing date is obtained, Defendants must file a new meet and confer declaration as required by Code of Civil Procedure section 430.41, subdivision (a)(3), at least 16 court days, plus any additional time as required for service of the declaration, before the new hearing date. If, after meeting and conferring, Plaintiffs agree to amend their first amended complaint, Plaintiffs and Defendants may file a stipulation and order for leave to file a second amended complaint, which will be granted by the Court without need for a hearing. (Cal. Rules of Court, rule 3.1207(4); Superior Court of California, County of Fresno Local Rules, Rule 2.7.2.)

Explanation:

On May 20, 2016, Defendants Fenglaly Lee, M.D. (erroneously sued as C. Lee Fenglaly, M.D.) and OMNI Women's Health Medical Group, Inc. ("Defendants") filed a demurrer to Plaintiffs Rosalva Negrete-Dabbs' and Freddy Dabbs' ("Plaintiffs") first amended complaint pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f).

In order to prove that Defendants complied with the meet and confer requirement of Code of Civil Procedure section 430.41, subdivision (a) before filing their demurrer, Defendants have filed the declaration of their counsel, Julie K. MacMichael. Ms. MacMichael's declaration states that, in order to satisfy the meet and confer requirement, on May 5, 2016, she sent a letter by fax and U.S. Mail to Plaintiffs' counsel. (Declaration of Julie K. MacMichael, ¶ 4.) After Ms. MacMichael did not receive a response to her letter from Plaintiffs' counsel, on May 17, 2016, she called Plaintiffs' counsel, but, since Plaintiffs' counsel was not available, she left a message on Plaintiffs' counsel's voicemail. (MacMichael Decl., ¶ 5.) In the afternoon of May 17, 2016, Ms.

MacMichael e-mailed Plaintiffs' counsel about her attempt to contact him by telephone, but was informed by an e-mail from Plaintiffs' counsel's assistant that Plaintiffs' counsel was out of state. (MacMichael Decl., ¶ 6.) As of the date of that the declaration was signed, May 19, 2016, Ms. MacMichael had not received any other response from Plaintiffs' counsel. (MacMichael Decl., ¶ 7.)

However, since Code of Civil Procedure section 430.41, subdivision (a) requires that the meet and confer process be conducted "in person or by telephone[,]" Ms. MacMichael's May 5, 2016 letter fails to establish that Defendants met and conferred with Plaintiffs before filing their demurrer. While Ms. MacMichael called Plaintiffs' counsel on the telephone on May 17, 2016, Ms. MacMichael did not actually speak with Plaintiffs' counsel, but only left a voicemail message. Therefore, Defendants have failed to establish that they sufficiently met and conferred with Plaintiffs before filing their demurrer as required by Code of Civil Procedure section 430.41, subdivision (a).

Accordingly, the Court takes the hearing on Defendants' demurrer off calendar. The Court orders Plaintiffs' and Defendants' counsel to meet and confer in person or by telephone as required by Code of Civil Procedure section 430.41, subdivision (a).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 6/20/16 .
(Judge's initials) (Date)